Minutes of IRS Courtesy Call November 15, 2000

On November 15, 2000, Chair Pam Olson and Section officers attended the annual ABA Tax Section courtesy call meeting with senior officials of the Internal Revenue Service. Attending on behalf of the IRS were Commissioner Charles Rossotti, Chief Counsel Stuart Brown, Division Commissioners Larry Langdon and John Dalrymple, and other IRS officials.

The impression of Section officers was that the IRS has significantly increased both its identification of issues and its development of long term, strategic responses to issues. In particular, Section officers found the IRS had initiatives under way that responded to many of the Section’s concerns regarding many of the perplexing issues currently facing the tax system.

The Commissioner opened the meeting by thanking the Section for voicing its support for funding for the IRS at the level requested by the Administration for Fiscal Year 2001. The Commissioner went on to say that, after considerable attention to studying the problems, developing new goals, and implementing measurement systems, the IRS anticipated the delivery of improved service and increased compliance initiatives in the coming year. The Commissioner provided a draft of the IRS strategic plan for Fiscal Years 2000-2005 and encouraged the Section to comment on the draft.

The Commissioner also reported that the IRS Oversight Board has quickly become active, and that the Board may seek input from the Section and other stakeholder groups.

I. Tax Shelters

Tax shelters were one major topic on the agenda. In addition to discussing the particular issues described below, Section officers and IRS officials discussed the state of the market for tax shelters. Section officers expressed concern that anecdotal evidence suggested the marketing of questionable shelters to individuals and smaller businesses was increasing, even though the anecdotal evidence again suggested IRS initiatives had slowed activity for large corporations. IRS officials inquired whether Section officers are seeing shelters that include proposals for reporting designed to reduce the likelihood of detection and examination. Section officers noted that they had seen the use of grantor trusts that is described in Notice 2000-44 but were unaware of other products involving planning to avoid detection. Larry Langdon discussed the use of penalties and penalty waivers as possible tools for increasing compliance and dealing with abusive shelters. IRS officials indicated that additional Notices attacking new shelter products could be anticipated in the near future. In response to a question on how shelter marketers targeted potential customers, Section officers commented that any individual who was publicly reported to have sold a substantial amount of stock could expect to be contacted by a large number of shelter marketers. Section officers also pointed out that employees of companies that were either about to go public or be acquired were a likely target for marketers of tax avoidance or minimization strategies and that preventive efforts by the IRS could be quite effective in weeding out investments in questionable strategies.

1. Coordination of tax shelter initiatives and guidance. The Section inquired as to the actions taken by the IRS to coordinate the tax shelter compliance initiatives and guidance among the operating divisions, especially given the placement of the Office of Tax Shelter Analysis within the LMSB division and the apparent growth in the marketing of shelters to individuals and smaller businesses. Mr. Langdon stated that OTSA refers shelter information to other divisions as appropriate. Commissioner Rossotti said that this was one of many areas cutting across operating division lines, in which the IRS has assigned a particular unit – in this case OTSA – to take the lead. Mr. Langdon reported that the IRS plans to establish a Compliance Council to coordinate key shelter and compliance issues. Each of the four divisions, the Office of Chief Counsel, and the Criminal Investigation Division would be represented on
the new Compliance Council. Mr. Langdon also pointed out that OTSA had tightened its liaison relationships with Chief Counsel and Treasury in considering such issues as shelter identification, compliance processes, and use of penalties.

2. Tax shelter registration and list maintenance; summons activity. Section officers observed that the number of transactions that appear to be covered by the listing regulation is too broad. Many practitioners have concluded the regulation is broad enough to capture almost any tax planning idea. As a result, the deterrent effect of the regulations is being undermined. Since basically all transactions must be listed, the listing requirement does not make taxpayers stop and think before engaging in aggressive transactions. Section officers discussed the operation of the regulatory exceptions against this background, and in particular suggested replacing the "no reasonable basis for denial" exception with a standard that would cover more transactions. Alternative standards that were discussed included “no realistic possibility of success” and “substantial authority.” Section officers also suggested that the listing requirement apply only to a promoter/adviser with contingent or other value based fee. Section officers noted the lack of any public enforcement action to date with respect to the lists of transactions compiled. Section officers noted the importance of tax advisors to the functioning of the tax system and suggested the IRS consider efforts to meet with firms subject to the listing and registration requirements to discuss the procedures the firms have been put in place to ensure compliance with the requirements. In addition, Section officers observed that publicity regarding enforcement action had a significant potential for deterrent effect, and noted the effect of the publicity given the enforcement of the third party summonses issued to credit card companies regarding offshore trusts. Section officers encouraged the use of publicity when other third party summonses actions are taken.

3. Circular 230. The IRS stated that the Office of the Director of Practice is doubling in size to carry out its charge of ensuring professional conduct and is prepared, if necessary, to triple its current size to carry out its responsibilities. Commissioner Rossoiti pointed out that an effective Director of Practice operation is a good way for the IRS to leverage its resources if a relatively modest application of resources achieves a relatively large improvement in compliance. IRS officials noted that revisions to Circular 230 would be forthcoming in the near future, but that several areas are still under study. The Section expressed the concern that Director of Practice disciplinary activity might be increased without adequate attention to due process issues. Particular concern was expressed about publication of disciplinary action in the Internal Revenue Bulletin prior to a practitioner’s exhaustion of his or her appeal rights.

II. Low Income Taxpayers

Chair-Elect Richard Lipton reported on his plans to increase Section activity in assisting low income taxpayers. He also reported a problem detected by tax clinics concerning deficiency notices. Often the IRS issues a taxpayer separate deficiency notices for each year under audit. This causes the taxpayer to receive multiple deficiency notices that may be mistakenly regarded as multiple copies of a single deficiency notice. After resolving the first deficiency, the taxpayer then may be surprised to find that multiple deficiencies remain outstanding and that levies may be attached to taxpayer property. Wage and Investment Commissioner John Dalrymple reported that he was aware of this issue. The IRS is working on a long range project that is designed to enable the IRS to produce a single notice covering deficiencies for all taxes and all years. However, there are major information technology issues with such an effort, given the structure of legacy systems, so that is not a near term solution. Mr. Dalrymple also reported success in rewriting 6 of the most complex notices; that 11 more rewrites were under way; and that eventually all correspondence forms will be rewritten to make them more comprehensible. Mr. Dalrymple also reported that work was under way to respond to another clinic request for the ability to be able to check with the IRS to determine all of the deficiencies shown for a particular taxpayer.
Section officers asked about the prospect for renewing a nonfiler initiative. Mr. Dalrymple reported that the Small Business/Self Employed Division was leading an effort to put together an approach that repeated the initial success of the last nonfiler initiative together with long term, strategic measures to avoid the recidivism and inability to follow up that accompanied the last initiative. He expects that the Section and other practitioners will be asked for assistance in that effort.

Chair Pam Olson observed that an American Tax Policy Institute study indicated serious problems with return preparers serving low income taxpayers and inquired about IRS plans to improve their performance. Mr. Dalrymple reported that this is an important initiative, because IRS studies show that 65% of excessive refund claims are prepared by unenrolled preparers. He said that in 1999, the IRS made educational visits to 11,000 preparers, as well as enforcement related visits to about 1,500. He said that the educational visits were well received, and he believes they were helpful in improving understanding and compliance. He said that the preparer visits would continue at a lower level in future years.

Mr. Dalrymple also noted that the IRS will commit about $6 million to clinic funding this fiscal year. He also reported good lines of communication with Nina Olson, Chair of the Section’s Low Income Taxpayers Committee and head of the National Resource Center for low income taxpayer clinics, which the Section has committed to support financially. He pointed out that Ms. Olson was one of the most highly rated speakers at a recent Wage and Investment managers meeting.

Section officers asked about opportunities for partnering with the IRS on making taxpayers aware of clinic resources, especially for taxpayers for whom English is not a first language. Mr. Dalrymple offered to work with the Section and pointed out that collaborative activity is often the most effective way of getting this message out. He stated that the Catholic Church has been helpful in publicizing clinic availability. He also stated that the IRS in some locations has experimented with flyers in deficiency notice envelopes and with IRS referrals to clinics.

Section officers noted that simplifying the tax law for low income taxpayers will be a high priority for the Section. Meeting participants discussed family definition issues as one area for potential simplification.

III. Section Priority List

Section officers advised IRS officials that the Section planned to maintain a “Top 5/Next 10” list of Section projects and post it on the Section web site. Meeting participants discussed certain items on the current list, including the February 1, 2001, conference on Alternative Dispute Resolution. Chair Pam Olson noted that a number of senior IRS officials will participate in the conference and that it will cover in detail the IRS’s efforts to more efficiently resolve issues.

IV. Public Relations

Section officers reminded IRS officials of the Section’s increasing attention to communications activities and inquired regarding IRS interest in the Section focusing communications activity in particular areas.

Commissioner Rossotti commented that past publicity of Section comments on the tax shelter problem had been helpful. He also pointed out that the IRS would soon be releasing its annual statistics on compliance and audit levels. The Commissioner stated that the press often first publicizes these statistics in early April, as if an investigative reporter had just uncovered them. Section officers noted the inordinate attention the press gives to enforcement statistics, particularly audit levels, and the lack of
attention to the various (front end and back end) approaches undertaken by the IRS to improve compliance. Commissioner Rossotti suggested it would be constructive for the Section to comment on these statistics shortly after their publication.

The meeting, which began at 2:30 p.m., adjourned shortly after 4:30 p.m.